

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LA MAR GUNN,	§
	§ No. 750, 2010
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
SELECT PORTFOLIO	§ C.A. No. 09C-04-102
SERVICING, INC. and U.S. BANK	§
NATIONAL ASSOCIATION,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: April 25, 2011

Decided: June 13, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 13th day of June 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, La Mar Gunn, filed an appeal from the Superior Court’s November 12, 2010 bench ruling granting the motion to dismiss of the defendants-appellees, Select Portfolio Servicing, Inc. and U.S. Bank National Association (the “appellees”). The appellees have moved to affirm the Superior Court’s judgment on the ground that it is manifest on the

face of the opening brief that this appeal is without merit.¹ We agree and affirm.

(2) The record reflects that Gunn filed a complaint against the appellees in the Superior Court alleging breach of contract, fraud, bad faith banking practices, and violation of the Fair Debt Collection Practices Act and the Real Estate Settlement Procedures Act. On October 21, 2010, the Superior Court held a hearing on the appellees' motion to dismiss the complaint. On November 12, 2010, the Superior Court issued its bench ruling on the motion to dismiss.

(3) In its bench ruling, the Superior Court determined that a) Gunn was not the proper plaintiff to raise claims of bad faith banking or breach of contract or claims under the Fair Debt Collection Practices Act or the Real Estate Settlement Procedures Act because he was not a party to the original real estate transaction; and b) there was no conversion or fraud by the appellees as a matter of law and fact.

(4) In his appeal from the Superior Court's November 12, 2010 order, Gunn fails to address any of the legal or factual bases of the Superior Court's November 12, 2010 bench ruling dismissing his complaint. Instead, he asserts eighteen separate claims, all of which are, in essence, grounded in

¹ Supr. Ct. R. 25(a).

his contention that the appellees did not have a legal interest in the mortgage securing the residential property located at 201 Cornwell Drive, Bear, Delaware, and, therefore, had no standing to file a foreclosure action when the mortgage went into default.

(5) We have carefully reviewed the record in this case. The same basic claim asserted in the instant appeal has been unsuccessfully asserted by Gunn in two prior appeals in this Court.² Gunn's instant claim is, therefore, barred in this proceeding as *res judicata*.³ Moreover, in the absence of any legal or factual basis for reversal of the Superior Court's dismissal of Gunn's complaint, we conclude that the Superior Court's judgment must be affirmed.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

² *Gunn v. U.S. Bank Nat'l Assoc*, Del. Supr., No. 102, 2009, Ridgely, J. (June 30, 2010); *Gunn v. U.S. Bank Nat'l Assoc*, Del. Supr., No. 742, 2010, Holland, J. (May 26, 2011).

³ *Dover Historical Society, Inc. v. City of Dover Planning Comm'n*, 902 A.2d 1084, 1092 (Del. 2006) (*res judicata* operates to bar a claim when a) the original court had jurisdiction over the subject matter and the parties; b) the parties were the same as the case at bar; c) the issue decided was the same as the case at bar; d) the issue was decided adversely to the appellant; and e) the judgment in the prior action was final).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice